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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,000	07/29/2003	Gary S. Kohler	1855.001US1	8548

21186 7590 11/28/2007  
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EXAMINER
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MISIASZEK, MICHAEL

ART UNIT	PAPER NUMBER
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3625

MAIL DATE	DELIVERY MODE
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11/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/630,000	KOHLER, GARY S.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Misiaszek	3625	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,33-35,37-45 and 47-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,33-35,37-45 and 47-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/27/06</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of group I, claims 1-5 and 33-53 in the reply filed on 10/4/2007 is acknowledged.

### ***Claim Objections***

Claim 42 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 42 purports to be an apparatus claim, yet it is recited as being dependent on claim 33, a method claim. Accordingly, the claim does not further limit the steps recited in the method of claim 33, and its dependency from claim 33 is improper.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 1. Claims 35 and 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 35 and 37 are recited as being dependent on claims 31 and 36, respectively, which have been cancelled by the applicant. For purposes of examination, claims 35 and 37 will be considered to depend from claims 33 and 35, respectively.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**2. Claims 1-3, 33, 35, 37, 39, 41-45, and 47-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US 6085169, hereinafter Walker) in view of Sapp (US 20030009403 A1).**

Regarding Claims 1-3

Walker discloses a method comprising:

- receiving in an information processing device a bid for airline travel (at least abstract)
- determining whether the bid is acceptable to a seller of air travel services (at least abstract)
- accepting a bid to purchase an airline ticket for travel between the two cities (at least abstract)
- wherein prior to accepting the bid, displaying the total amount bid (at least figure 9b)

Walker does not explicitly disclose:

- wherein the bid includes an amount the bidder is willing to pay per unit of distance flown;
- using a wide area network, displaying to a potential bidder an indication of the air travel distance between two cities
- wherein the total amount bid is calculated at least in part based on the cost per unit distance bid and the distance between the two cities.

Sapp teaches that it is known to include determining the price of airfare based on a cost per distance scheme (at least paragraph [0031] in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method, as taught by Walker, with the calculation using a cost per distance scheme, as taught by Sapp, since such a modification would have provided increased convenience in budgeting air travel through an easy cost calculation (at least paragraph [0031] of Sapp).

The Examiner submits that although neither Walker nor Sapp explicitly discloses displaying the air travel distance between two cities, such a step would have been an obvious variant given what is disclosed by Walker and Sapp. It would have been obvious to one of ordinary skill in the art at the time of the invention that in order to allow a user to calculate air travel cost based on a cost per distance scheme, it would be logical to display the distance between two desired cities.

Regarding Claims 33, 35, 37, 39, 41, 42

Walker disclose a method comprising:

- generating a bid for airline travel on a first information processing device (at least abstract)
- transmitting the bid from the first information processing device over a communication link to a second information processing device (at least column 3, lines 40-60)
- receiving a bid response on the first information processing device from the second information processing device over the communication link (at least column 3, lines 40-60)
- the bid further includes an origin, a destination, a date for the airline travel (at least column 5, lines 31-43)
- the bid is transmitted and the bid response is received over the global computer network (at least column 3, lines 40-60)
- receiving a bid response includes receiving a bid rejection and a counteroffer for airline travel (at least column 3, lines 40-60)
- receiving a bid rejection and a counteroffer for airline travel includes receiving only a counteroffer that operates as a bid rejection and a counteroffer (at least column 3, lines 40-60)

Walker does not explicitly disclose:

- wherein the bid includes an amount the bidder is willing to pay per unit of distance flown;

Sapp teaches that it is known to include determining the price of airfare based on a cost per distance scheme (at least paragraph [0031] in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method, as taught by Walker, with the calculation using a cost per distance scheme, as taught by Sapp, since such a modification would have provided increased convenience in budgeting air travel through an easy cost calculation (at least paragraph [0031] of Sapp).



Regarding Claims 43-45, 48-53

Walker discloses a system comprising:

- a first information processing device including: a processor; a storage device; an input device; a communication link; software operable on the processor to: receive input for generating a bid for airline travel (at least column 3, lines 40-60: customer contacts system online, meaning processor, storage device, communication link, software are inherent on customer system)
- submit the bid in a carrier signal over the communication link to a second information processing device (at least column 3, lines 40-60)
- receive a response in a carrier signal over the communication link from the second information processing device (at least column 3, lines 40-60)
- wherein the response from the second information processing device includes an indication that the bid is accepted (at least column 3, lines 40-60)
- an output device (at least column 3, lines 40-60: response output to customer from CPO system)
- software operable on the processor to: generate an output from the output device in response to receiving a response from the second information processing device (at least column 3, lines 40-60: response output to customer)
- wherein the input further includes: an origin; a destination; and a date for travel (at least column 5, lines 31-43)
- wherein the communication link is operatively coupled to a communication network (at least column 3, lines 40-60: user contacts system online)

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- wherein the communication network is a global computer network (at least column 3, lines 40-60: user contacts system online)
- wherein the second information processing system is a group of information processing devices that are operable in concert to receive and reply to submitted bids (at least figure 1)

Walker does not explicitly disclose:

- wherein the bid includes an amount the bidder is willing to pay per unit of distance flown;

Sapp teaches that it is known to include determining the price of airfare based on a cost per distance scheme (at least paragraph [0031] in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method, as taught by Walker, with the calculation using a cost per distance scheme, as taught by Sapp, since such a modification would have provided increased convenience in budgeting air travel through an easy cost calculation (at least paragraph [0031] of Sapp).

The Examiner notes with regard to claims 50-52, though Walker does disclose a customer input device or terminal, Walker not disclose the particular devices/terminals set forth by the claims. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Walker to have included such devices/terminals because the inclusion of such devices/terminals would have been an obvious matter of design choice in light of the system already disclosed by Walker. Such modification would not have otherwise affected the system of Walker and would have merely represented one of numerous steps that the skilled artisan would have found obvious for the purposes already disclosed by Walker. Additionally, applicant has not persuasively demonstrated the criticality of providing these specific attributes versus the relations disclosed by Walker

**3. Claims 4, 5, 34, 38, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Sapp as applied above, and further in view of Alaia et al. (US 20020046148 A1, hereinafter Alaia).**

Regarding Claims 4, 5, 34, 40

Walker and Sapp disclose the claimed invention except for:

- wherein the bid further includes a base fee that is fixed in amount
- wherein there is further displayed to the bidder a fixed base fee that is required to be paid in addition to the per unit distance fee in order to bid on an airline ticket.
- wherein the counteroffer for airline travel includes a fixed cost portion and a cost per mile portion.

Alaia teaches that it is known to include an auction system in which a bid comprises a fixed portion and a variable portion, which are displayed (at least paragraph [0072]) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Walker and Sapp, with the bid with a fixed and variable portion, as taught by Alaia, since such a modification would have provided increased confidence and efficiency for bidders in an auction system by assuring that bids can be adjusted rapidly to changing market conditions and that bids will not break set ceiling and floor values (at least paragraph [0072] of Alaia).

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Regarding Claim 38

determining an airline travel mileage;

calculating the total cost per mile portion by multiplying the airline travel mileage and the cost per mile portion;

summing a fixed cost portion and the total cost per mile portion; and

wherein the transmitting the bid includes transmitting the sum of the fixed cost portion and the total cost portion.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Misiaszek whose telephone number is (571) 272-6961. The examiner can normally be reached on 8:00 AM - 4:30 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael A. Misiaszek  
Patent Examiner  
11/25/2007

  
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